

CANADA / JUDGMENT

# M.H.G. v. M.Q.

2003 BCSC 1756

**COURT**

Supreme Court of British Columbia

**DECIDED**

21 November 2003

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IN THE SUPREME COURT OF BRITISH COLUMBIA IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: M.H.G. v. M.Q. 2003 BCSC 1756 Date: 20031121 Docket: E020089 Registry: Vancouver Between: M.H.G. also known as M.H. Plaintiff And M.Q. Defendant Before: The Honourable Mr. Justice Parrett Reasons for Judgment Counsel for the plaintiff: M. Dyonisius Counsel for the defendant: I. Adelman Date and Place of Hearing: November 6 and 12, 2003 Vancouver, B.C.

## INTRODUCTION

- [1] The plaintiff in this action seeks leave to amend the writ of summons and statement of claim originally filed on January 10, 2002, and amended on June 26, 2002. The material amendment sought in the present application is to add the underlined words, in the following extract, to the present language of Part E of the statement of claim: An order that the Plaintiff and the Defendant be divorced from each other or in the alternative a declaration that the marriage is null and void.
- [2] The application is opposed by the defendant who submits that, in the present action, which is founded on the plaintiff's allegation of a valid marriage having taken place, the amendment seeks to add an inconsistent claim - namely that the marriage he alleges is void.

## BACKGROUND

- [3] After this action was commenced on January 10, 2002, the plaintiff filed a desk order divorce application on February 5, 2002. On February 14, 2002, the defendant filed a defence in which she opposed the granting of a divorce on the basis that they were never legally married. She went on to deny that they ever lived together as "husband and wife in a marriage like relationship".
- [4] On February 20, 2002, the desk order application was rejected and the matter was set for an early intervention hearing. At that hearing, concern was expressed about the possibility of fraud and forgery existing in this case.

- [5] On August 28, 2002, the plaintiff filed an application pursuant to Rule 18A seeking a divorce. On November 12, 2002, I ordered a trial of two issues - (1) the validity of the marriage; and (2) the validity of the marriage certificate produced by the plaintiff. Written reasons with respect to that order were filed on December 6, 2002, citation 2002 BCSC 1697. DISCUSSION
- [6] This is an unusual case and, in my view, the proposed pleading may well not constitute an alternative cause of action at all but rather a different claim for relief.
- [7] There are significant difficulties, yet again, with the affidavit material filed in support of this application. The plaintiff's affidavit sworn October 21, 2003 and filed on October 24, 2003 - (a) fails to address the factual basis on which he asserts the marriage is null and void; and (b), fails to comply with the requirements of Rule 51(10).
- [8] Regardless of those failings, it is not necessary, on an application under Rule 24(1), for evidence to be provided. It is sufficient if the pleading discloses a reasonable cause of action and amendment should be allowed unless undue prejudice or delay becomes a factor (McNaughton v. Baker (1988), B.C.L.R. (2d) 17 at p. 27).
- [9] In this case I am satisfied that neither prejudice or delay are factors and that I should exercise my discretion to allow the proposed amendments so that this matter can, hopefully, move forward to the trial of the issues I ordered on November 12, 2002, over one year ago.
- [10] Within one week from the release of these reasons, counsel are to provide trial division with their estimates of the time required for this trial. At the same time they are to provide a joint list of their proposed witnesses, together with their estimates of the time required for direct examination and cross-examination of each witness. "W.G. Parrett, J." The Honourable Mr. Justice W.G. Parrett

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